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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

PAUL JALBERT II,

Defendant and Respondent.

E054977

(Super.Ct.No. RIF10000160)

OPINION

APPEAL from the Superior Court of Riverside County. Elaine M. Johnson,
Judge. Order affirmed.

Paul E. Zellerbach, District Attorney and Matt Reilly, Deputy District Attorney,
for Plaintiff and Appellant.

Rex Williams, under appointment by the Court of Appeal, for Defendant and
Respondent.

Defendant, Paul Jalbert, pled guilty to transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a)), possessing paraphernalia for consuming controlled substances (Health & Saf. Code, § 11364) and being under the influence of a controlled substance (Health & Saf. Code, § 11550). He also admitted having suffered a prior conviction for which he served a prison sentence (Pen. Code, § 667.5, subd. (b)).¹ On January 26, 2010, he was granted probation, with the condition that he successfully complete the Recovery Opportunity Center (ROC) program and, inter alia, pay a \$200 restitution fine. He paid \$19.79 of the \$200 fine. On September 14, 2011, he “graduated” from the ROC program and moved, pursuant to section 1203.4 to have his guilty plea set aside, the case against him dismissed and all fines and fees suspended and stayed. The People objected to the suspension/staying of his fines and fees. The trial court granted his motion and terminated probation. As to defendant’s fines and fees, the trial court said to defendant, “I’m going to be asking you to pay it back but not financially, but by . . . participating in the alumni[i] program [for ROC]” The People here contend that the trial court erred in suspending \$180.21 of his restitution fine. We disagree and affirm the order.

ADDITIONAL FACTS

In the record before this court, there appears a document entitled “Sentencing Memorandum” which is a two-page pre-printed form listing all the conditions of

¹ All further statutory references are to the Penal Code as it existed in 2010. (See *People v. Souza* (2012) 54 Cal.4th 90, 143.)

defendant's probation. On the first page, under the title, "Fines/Fees/Restitution: Fines/Fees and Restitution imposed to be paid to the Court as directed by the Enhanced Collections Division" is checked off "Pay restitution fine of \$200 per 1202.4(b) Penal Code]." The signatures of defendant and his attorney appear at the bottom of the second page, under the following, "I have read and do accept these terms and conditions of probation on pages one and two." At the taking of the plea, the trial court said to defendant, "... [T]he probation terms are set out here on a probation form ..." "I'm placing you on three years formal probation. The terms of that probation are set forth here on the two-page probation form. I see a signature here. [¶] Did you sign this document?" Defendant responded that he did. The trial court then said, "There's a number of terms in here. I'm not going to go back through all of them since you already read it and understood it. I don't see the need to review it again with you."² We thus reject defendant's contention that the trial court did not impose a restitution fine at the time probation was granted.

We also reject defendant's contention that the People failed to interpose a "specific, meaningful" objection to the suspension of the restitution fine. Although the basis for the People's objection was not disclosed, it was clear that they were objecting. Moreover, because we reject the People's position on its merits, defendant loses nothing by us bypassing whatever forfeiture the People should suffer due to their lack of specificity below.

² There are no court minutes for this date in the record before us.

ANALYSIS

Section 1202.4 provides for the imposition of both direct restitution to the victim and a restitution fine (§ 1202.4, subd. (a)(3), Stats. 2010, ch. 351, § 9). Subdivision (m) provides, “In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a *restitution order* that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable *by a victim* pursuant to Section 1214 until the obligation is satisfied.” The term “victim” as used in section 1202.4 does not include the state, the district attorney, the Attorney General, the clerk of the court, the probation officer, any other person responsible for the collection of criminal fines or the California Victim Compensation and Government Claims Board. (§ 1202.4, subd. (k).) As used throughout section 1202.4, “restitution order” refers to direct restitution and “restitution fine” refers to restitution fines (§§ 1202.4, subd. (A)(3); 1202.4, subds. (b)-(j), (p)). Section 1202.43, subdivision (a) provides that a restitution fine imposed pursuant to section 1202.4 is payable to the clerk of the court, the probation officer or any other person responsible for the collection of criminal fines. Section 1202.43, subdivision (b) empowers the district attorney or the Attorney General, upon request by the Controller, to “take any necessary action to recover amounts owing on a restitution fine.” Section 1214 provides, in pertinent part, “If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4 . . . the judgment may be enforced in the manner provided for the enforcement of money judgments generally. *Any portion of a restitution fine or restitution fee that remains unsatisfied after a defendant is no longer*

on probation . . . is enforceable by the California Victim Compensation and Government Claims Board pursuant to this section. . . . [¶] . . . [¶] . . . [A] restitution fine that was imposed pursuant to section 1202.4 . . . may be enforced in the same manner as a money judgment in a limited civil case”

Thus, although subdivision (m) of section 1202.4 appears to apply only to direct restitution, it is clear that section 1214 provides that an unpaid portion of a restitution fine after a defendant is no longer on probation may be enforced as a money judgment by the California Victim Compensation and Government Claims Board.

Based on the facts that under the applicable statutes, imposition of a restitution fine is mandatory (absent compelling and extraordinary reasons not to), payment of the fine is a condition of probation and the unpaid portion is enforceable as a money judgment after probation has ended,³ three cases have held that a restitution fine imposed at the time probation was granted survived the end of probation where probation was terminated and the defendant was sentenced to prison (*Chambers, supra*, 65 Cal.App.4th 819, 822; *People v. Arata* (2004) 118 Cal.App.4th 195, 201; *People v. Urke* (2011) 197 Cal.App.4th 766, 779).⁴

On the other hand, section 1203.4 provides, in pertinent part, “In any case in which a defendant has . . . been discharged prior to the termination of the period of

³ Interestingly, *People v. Chambers* (1998) 65 Cal.App.4th 819, 822 (*Chambers*) relied, in this last regard, on the provision for direct restitution, not restitution fines.

⁴ The People also cite *People v. Kleinman* (2004) 123 Cal.App.4th 1476, 1481, but it was a direct restitution case.

probation, . . . the defendant shall . . . be permitted by the court to withdraw his . . . plea of guilty . . . and enter a plea of not guilty; . . . the court shall set aside the verdict of guilty . . . and . . . shall thereupon dismiss the accusations . . . against the defendant and . . . he . . . shall thereafter be released from all penalties and disabilities resulting from the offense of which he . . . has been convicted” As defendant correctly points out, a restitution fine is a penalty. (*People v. Hanson* (2000) 23 Cal.4th 355, 362.) We note that the People did not object to defendant withdrawing his guilty pleas (and admission), to the trial court that dismissed the accusations against him and they did not object to defendant being released from any penalties and disabilities resulting from his offenses, save the suspension of the fees and fines, including the restitution fee. In the face of these two seemingly conflicting provisions, we must decide which one “wins out.” Given the obvious rehabilitative effect of successful drug treatment (see § 1210), as the defendant here experienced, the state interest in rewarding defendant for his graduation from the ROC program far outweighs its interest in the prospect of collecting \$180.21 from him.

DISPOSITION

The order is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

MILLER
J.